

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, November 5, 2010
Arizona State Courts Building
Conference Room 345 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto, Chair	Honorable David Mackey
Honorable Eddward Ballinger	Honorable Margaret Maxwell
Honorable Michael J. Burke	Honorable Stephen F. McCarville
Honorable James Conlogue	Honorable Colleen McNally
Honorable Michael J. Cruikshank - <i>telephonic</i>	Honorable Patricia Noland - <i>telephonic</i>
Honorable Robert Duber II	Mr. Phillip Knox, proxy for
Honorable Sue Hall - <i>telephonic</i>	Mr. Marcus Reinkensmeyer
Mr. Joshua Halversen	Honorable Michala Ruechel - <i>telephonic</i>
Honorable Charles V. Harrington - <i>telephonic</i>	Honorable Monica Stauffer
Honorable Carey S. Hyatt	Honorable Randall Warner
Mr. William G. Klain	Ms. Susan Wilson
Honorable Kenneth Lee - <i>telephonic</i>	

MEMBERS ABSENT:

Mr. Tim Hardy

PRESENTERS/GUESTS:

Ms. Katy Proctor, AOC	Ms. Susan Pickard, AOC
Ms. Linda Grau, AOC	Ms. Jennifer Greene, AOC
Ms. Cindy Cook, AOC	Ms. Doreen Borgmann, Arizona Court
Ms. Melinda Hardman, AOC	Reporters Association
Mr. Patrick Scott, AOC	

STAFF:

Ms. Kay Radwanski, AOC	Ms. Tama Reily, AOC
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I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the November 5, 2010, meeting of the Committee on Superior Court (COSC) was called to order by Honorable James A. Soto, chair, at 10:07 a.m.

Judge Soto announced the COSC meeting dates for 2011:

- Friday, February 4, 2011
- Friday, May 20, 2011
- Friday, September 9, 2011
- Friday, November 4, 2011

The meetings will take place at the State Courts Building. The committee made no objections to the meeting dates.

B. Approval of Minutes

The draft minutes from the September 10, 2010, meeting of the COSC were presented for approval.

MOTION: To approve the September 10, 2010, COSC meeting minutes as presented. Motion seconded. Approved unanimously. COSC-10-015

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Legislative Update

Ms. Katy Proctor, AOC legislative liaison, reported on proposed legislation that may impact superior courts. She also requested committee feedback on several proposals submitted after the September COSC meeting.

2011-03: Unlawful sexual conduct; probation employees

Concerns were raised at the September COSC meeting as members did not have the full language of this proposal. Ms. Proctor reported the proposal has been revised to address some of the committee's concerns. The changes include a reduced scope as to the offenses that would rise to the level of felony. In addition, sanctions would range from training and discipline, to termination, and, finally, felony. Furthermore, the revised draft would separate juvenile detention from probation-type activities, and juveniles in physical custody would be covered under the existing state statute. The Committee on Probation has voted to support the revised draft, and the Arizona Judicial Council (AJC) granted approval to include this proposal in the legislative package.

MOTION: To approve revised proposal 2011-03: Unlawful sexual conduct; probation employees, as presented. Motion seconded. Approved unanimously. COSC-10-016

2011-06: Pretrial services, arrests

Ms. Proctor reported that this proposal was submitted after the September COSC meeting and that AJC is looking for COSC's feedback prior to the December AJC meeting. The proposal would allow probation officers in Maricopa County to serve warrants, make arrests, and bring in people who are under the authority of the probation department for violation of pretrial release conditions. The proposal applies only to Maricopa County and uses permissive language so that it is not mandatory.

Members expressed several concerns during discussion, including the fact that the proposal would create specialized areas, so that there is not a statewide set of duties and authority for probation officers – essentially conflicting statutory definitions. Conversely, Ms. Proctor related that the probation chiefs have expressed concerns that if the proposal were passed statewide, then the smaller counties' boards of supervisors may make it mandatory without providing additional funding. Other members countered that what is good for the larger urban counties may not work well for smaller rural counties. To the suggestion that the proposal is 'morphing' probation officers into law enforcement officers, Ms. Proctor pointed out that probation officers currently have the authority to perform these actions with persons under the supervision of the court and on probation. This proposal simply extends their authority to persons on pretrial release.

Several members remarked on the lack of information as to the purpose for the proposal and the difficulty in providing feedback. To that end, Ms. Proctor read the proposal verbatim as it was submitted:

Current law provides that adult probation officers have only the power to arrest those who are on probation. However, the court releases defendants before conviction and often places the defendant under the supervision of pretrial services. When these individuals fail to appear for a court proceeding, pretrial services/adult probation has no authority to arrest or otherwise bring these individuals in. This proposal would give probation officers the authority to arrest those defendants who are subject to the supervision of pretrial services and who the court has issued a bench warrant for their failure to appear at a court proceeding. This will greatly increase public safety, it will enable the court to complete criminal cases quicker, and it benefits victims.

MOTION: To oppose proposal 2011-06: Pretrial services; arrests.
Motion seconded. Passed 12-8. COSC-10-017

2011-09: Grand jury

This proposal was also submitted after the September COSC meeting. It would allow for the presiding judge to use an electronic recording system for recording grand jury proceedings and makes several conforming changes to allow for that as well. It would also repeal the requirement that the recordings be transcribed and filed within a specific period of time. The time period required for filing transcripts would be determined by the Supreme Court.

Ms. Doreen Borgmann, president of the Arizona Court Reporters Association (ACRA) addressed the committee regarding ACRA's opposition to the proposal. She described one of the main objections on the matter is the lack of stakeholders' involvement. There were no public defenders, defense attorneys, judges, or court reporters asked to weigh in on the issue prior to its presentation at the AJC. ACRA's position on the proposal is that it would restrict the rights of litigants and reduce the quality of the court record. Ms. Borgmann contended that it would replace court reporters in the grand jury room with the electronic recording system *For the Record* (FTR) for all proceedings. She also maintained that FTR recordings are of inconsistent quality, often inaudible, and compromise the integrity of the record.

Extensive discussion ensued on the issue. Mr. Phil Knox, court administrator for Maricopa County Superior Court, who also oversees the court's reporters, stated the proposed changes would be a significant cost savings to the court and asserted that the transcripts of grand jury proceedings in Maricopa County are requested only about seven percent of the time. Furthermore, only some of those recordings would then be transcribed by a reporter.

During discussion, several members questioned such minimal need of grand jury transcripts, reasoning that the defense attorney would rely upon the transcript for the facts of the case, as he/she is not present during the grand jury proceedings. Further discussion on this point revealed that there is a significant difference among the counties in how grand jury cases are processed, leading to a much higher transcript request rate in some counties. In Maricopa County, grand jury cases frequently reach resolution prior to filing of the transcripts, thus there is little need for the transcripts. However, Pima County reports a majority of cases settling after the defense attorney obtains the transcripts from the Clerk's office.

Several members reported that FTR recordings are inconsistent in quality and, that being the case, would not support the proposal. However, members agreed that if the electronic recording system were reliable, then the proposal would be an effective cost-saving measure. Members agreed that until the quality issue with the FTR, or any other electronic recording system, is resolved, it may be sufficient to use the system in domestic cases; however, in criminal cases there needs to be a higher standard upheld.

MOTION: To refrain from action on proposal 2011-09: Grand jury and to request more information from court reporters or others who might have the information about the frequency with which savings occur and further information from other counties about the differences from Maricopa County to the other counties. Motion seconded.
Passed 13-8-0. COSC-10-018

B. ACJA § 7-206: Certified Reporter

Ms. Linda Grau, programs and investigations unit manager in the Certification and Licensing Division, presented proposed changes to ACJA § 7-206: Certified Reporter. The amendments address language contained in the code of conduct that governs certified reporters, specifically the ethics section. The proposed amendments clarify provisions and prohibitions that pertain to certified reporters and third-party contracting. Ms. Grau reviewed the amended portions of the code section and discussed the public comments received on the proposal. She reported that the Board of Certified Reporters has recommended adoption of the proposed amendments.

Ms. Doreen Borgmann, president of the Arizona Court Reporters Association (ACRA), commented on ACRA's support of the proposed amendments. She discussed the "unfair business practices" of some national firms and stated that the amended language would aid in protecting the integrity of the record in Arizona.

Committee members suggested minor clarifications to the proposed new language.

MOTION: To recommend approval of the proposed amendments to ACJA § 7-206: Certified Reporter as presented. Motion seconded. Approved unanimously. COSC-10-019

C. E-Filing Update

Ms. Cindy Cook, court specialist in the AOC Caseflow Management Unit, updated the committee on the AZTurboCourt E-Filing Project. She reviewed the types of forms being developed: the intelligent form, which is targeted to the self-represented litigants and walks them through the process, and the simple form, which is more suited to attorneys. She also reviewed the various forms in production as print forms. Ms. Cook reported that there are currently attorneys filing into Maricopa County Superior Court through AZTurboCourt, and this continues to increase in volume. Under development with attached applications are civil initiating pleadings with Pima County Superior Court. The appellate courts began a pilot with an attached application to the Court of Appeals and to the Supreme Court on November 3. She added that civil subsequent filings into Maricopa County Superior Court will begin moving to mandatory e-filing in January. Notification will go out to attorneys within the next week, and training sessions are being scheduled. She reminded members this will be a phased-in process.

Ms. Cook provided two links where members can find additional information about AZTurboCourt and follow the E-Court Committee updates about policy issues:

- <http://www.azcourts.gov/cot/EFilingPolicyIssues.aspx>
- <http://supreme22/azturbocourtinfo/Forms.html>

D. Supreme Court Rule 124

Ms. Melinda Hardman, AOC court analyst, Court Services Division, gave a brief recap of Supreme Court Rule 124 (SCR 124) and the process of revising the rule to coordinate

with the statewide E-filing system. She also reported on developments and changes that have transpired since the September COSC meeting. She informed members the revised SCR 124 will be accompanied by a proposed Technical Standards document that is expected to be a more flexible document than the rule in order to accommodate the various technical processes that may need updating occasionally. Because all of the technical details have not yet been ironed out, the document is still in progress at this time. Ms. Hardman stated the goal is to file a rule change petition for SCR 124 and request an effective date of January 1, 2012.

During discussion, there were questions about a bullet point in the PowerPoint presentation that states ‘incorporates clerk – no reject concept.’ Ms. Hardman explained that in the mandatory e-filing project expected to go forward shortly in the Superior Court in Maricopa County, the policy may be somewhat flexible, but, ultimately, the statewide policy may be more firm. There was further questioning as to possible leeway being provided to the clerks to have the opportunity to notify a filer of needed corrections, so that the time of receipt and acceptance of documents are not necessarily the same. Ms. Hardman explained that these are matters still somewhat in flux and she is unable to provide a definitive answer at this time. Complaints were voiced by the clerks, who feel their concerns have not been heard.

MOTION: To oppose revisions to Supreme Court Rule 124 as presented based upon concerns that have been expressed regarding the concerns of the clerks. Motion seconded. Motion passed 22-1-0. COSC-10-020

E. Fee Waivers and Deferrals

Mr. Patrick Scott, court specialist, AOC Court Services Division, presented proposed amendments to ACJA § 5-206: Fee Deferrals and Waivers. Mr. Scott provided a brief overview of the code section and its purpose, which is to provide access to the courts for litigants who are unable to pay court fees. He explained the recommended changes will allow for waiver of fees upon application by a person receiving Supplemental Security Income (SSI). He discussed some of the substantive changes, which include allowing for a waiver of fees upon application in addition to some technical changes that were made to bring the code up to date.

MOTION: To support the proposed amendments to ACJA § 5-206::Fee Deferrals and Waivers, without the provision for the \$26.00 filing fee. Motion seconded. Approved unanimously. COSC-10-021

F. ACJA § 3-3202: Parent Education Class

Ms. Susan Pickard, court specialist, AOC Court Services Division, presented proposed amendments to ACJA § 3-202: Parent Education Program. She explained the changes are intended to allow for Alternative Delivery Methods (ADM), including web based, net meeting, and cable methods, and to allow for videotaped program presentations without the need for approval by the Administrative Office of the Courts. In addition, two

options were offered for language in paragraph F(8) regarding procurement laws and requirements.

MOTION: To approve the proposed changes to ACJA § 3-202: Parent Education Program, including alternate language to paragraph F(8). Motion seconded. Passed unanimously.
COSC-10-021

III. OTHER BUSINESS

A. Next Meeting Date

Friday, February 4, 2011
10:00 a.m. – 2:00 p.m.
Arizona State Courts Building
Conference Room 345 A/B

B. Good of the Order/Call to the Public

No public comments offered.